

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CINDY KAY DUTRA
a.k.a. CINDY KAY GRAHAM
1010 Winfield Street
Newbury Park, CA 91320

Registered Nurse License No. 410468

Respondent

Case No. 2012-567

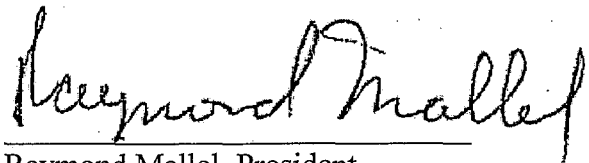
OAH No. 2012040711

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **November 15, 2012.**

IT IS SO ORDERED **October 16, 2012.**



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

ORIGINAL

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
GEOFFREY WARD
Deputy Attorney General
State Bar No. 246437
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2660
Facsimile: (213) 897-2804
Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2012-567

**CINDY KAY DUTRA AKA CINDY KAY
GRAHAM
1010 Winfield Street
Newbury Park, CA 91320
Registered Nurse License No. 410468**

OAH No. 2012040711
**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Louise R. Bailey, M.Ed., R.N. (Complainant) is the Interim Executive Officer of the Board of Registered Nursing (Board.) She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Geoffrey Ward, Deputy Attorney General.

2. Respondent Cindy Kay Dutra aka Cindy Kay Graham (Respondent) is represented in this proceeding by attorney Thomas R. Bradford, Esq., whose address is: 100 North First Street, Suite 300, Burbank, California 91502.

3. On or about March 31, 1987, the Board issued Registered Nurse License No. 410468 to Cindy Kay Dutra aka Cindy Kay Graham (Respondent). The Registered Nurse License was in

1 full force and effect at all times relevant to the charges brought in Accusation No. 2012-567 and
2 will expire on January 31, 2013, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2012-567 was filed before the Board, Department of Consumer
5 Affairs, and is currently pending against Respondent. The Accusation and all other statutorily
6 required documents were properly served on Respondent on March 22, 2012. Respondent timely
7 filed her Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 2012-567 is attached as exhibit A and incorporated herein
9 by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 2012-567. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of her legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 her own expense; the right to confront and cross-examine the witnesses against her; the right to
18 present evidence and to testify on her own behalf; the right to the issuance of subpoenas to
19 compel the attendance of witnesses and the production of documents; the right to reconsideration
20 and court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 2012-567.

27 10. Respondent agrees that her Registered Nurse License is subject to discipline and she
28 agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CIRCUMSTANCES IN MITIGATION

11. Respondent Cindy Kay Dutra aka Cindy Kay Graham has never been the subject of any prior disciplinary action. She is admitting responsibility at an early stage in the proceedings. She has submitted evidence that she has voluntarily undertaken rehabilitation to address the misconduct alleged in the Accusation. She has also submitted testimonials from colleagues and supervisors attesting to her competence as a registered nurse and to her commitment to rehabilitation.

CONTINGENCY

12. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

1 15. In consideration of the foregoing admissions and stipulations, the parties agree that
2 the Board may, without further notice or formal proceeding, issue and enter the following
3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Registered Nurse License No. 410468 issued to
6 Respondent Cindy Kay Dutra aka Cindy Kay Graham (Respondent) is revoked. However, the
7 revocation is stayed and Respondent is placed on probation for three years on the following terms
8 and conditions.

9 **Severability Clause.** Each condition of probation contained herein is a separate and
10 distinct condition. If any condition of this Order, or any application thereof, is declared
11 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
12 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
13 and enforceable to the fullest extent permitted by law.

14 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and
15 detailed account of any and all violations of law shall be reported by Respondent to the Board in
16 writing within 72 hours of occurrence. To permit monitoring of compliance with this condition,
17 Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the
18 effective date of the decision, unless previously submitted as part of the licensure application
19 process.

20 **Criminal Court Orders:** If Respondent is under criminal court orders, including
21 probation or parole, and the order is violated, this shall be deemed a violation of these probation
22 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

23 2. **Comply with the Board's Probation Program.** Respondent shall fully comply with
24 the conditions of the Probation Program established by the Board and cooperate with
25 representatives of the Board in its monitoring and investigation of the Respondent's compliance
26 with the Board's Probation Program. Respondent shall inform the Board in writing within no
27 more than 15 days of any address change and shall at all times maintain an active, current license
28 status with the Board, including during any period of suspension.

1 Upon successful completion of probation, Respondent's license shall be fully restored.

2 3. **Report in Person.** Respondent, during the period of probation, shall appear in
3 person at interviews/meetings as directed by the Board or its designated representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
5 practice as a registered nurse outside of California shall not apply toward a reduction of this
6 probation time period. Respondent's probation is tolled, if and when she resides outside of
7 California. Respondent must provide written notice to the Board within 15 days of any change of
8 residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever been licensed
11 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
12 information regarding the status of each license and any changes in such license status during the
13 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
14 license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
16 or cause to be submitted such written reports or declarations and verification of actions under
17 penalty of perjury, as required by the Board. These reports or declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
22 state and territory in which she has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
24 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
25 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered nursing"
27 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
28 non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice nursing
2 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

3 If Respondent has not complied with this condition during the probationary term, and
4 Respondent has presented sufficient documentation of her good faith efforts to comply with this
5 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
6 extension of Respondent's probation period up to one year without further hearing in order to
7 comply with this condition. During the one year extension, all original conditions of probation
8 shall apply.

9 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
10 prior approval from the Board before commencing or continuing any employment, paid or
11 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
12 performance evaluations and other employment related reports as a registered nurse upon request
13 of the Board.

14 Respondent shall provide a copy of this Decision to her employer and immediate
15 supervisors prior to commencement of any nursing or other health care related employment.

16 In addition to the above, Respondent shall notify the Board in writing within 72 hours after
17 she obtains any nursing or other health care related employment. Respondent shall notify the
18 Board in writing within 72 hours after she is terminated or separated, regardless of cause, from
19 any nursing, or other health care related employment with a full explanation of the circumstances
20 surrounding the termination or separation.

21 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
22 Respondent's level of supervision, collaboration, or both before commencing or continuing any
23 employment as a registered nurse, or education and training that includes patient care.

24 Respondent shall practice only under the direct supervision of a registered nurse in good
25 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
26 of supervision or collaboration (e.g., with an advanced practice nurse or physician) are approved.

27 Respondent's level of supervision or collaboration may include, but is not limited to the
28 following:

1 (a) Maximum - The individual providing supervision and/or collaboration is present in
2 the patient care area or in any other work setting at all times.

3 (b) Moderate - The individual providing supervision and/or collaboration is in the patient
4 care unit or in any other work setting at least half the hours Respondent works.

5 (c) Minimum - The individual providing supervision and/or collaboration has person-to-
6 person communication with Respondent at least twice during each shift worked.

7 (d) Home Health Care - If Respondent is approved to work in the home health care
8 setting, the individual providing supervision or collaboration shall have person-to-person
9 communication with Respondent as required by the Board each work day. Respondent shall
10 maintain telephone or other telecommunication contact with the individual providing supervision
11 or collaboration as required by the Board during each work day. The individual providing
12 supervision or collaboration shall conduct, as required by the Board, periodic, on-site visits to
13 patients' homes visited by Respondent with or without Respondent present.

14 9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any
15 private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse,
16 or for an in-house nursing pool.

17 Respondent shall not work for a licensed home health agency as a visiting nurse unless the
18 registered nursing supervision and other protections for home visits have been approved by the
19 Board. Respondent shall not work in any other registered nursing occupation where home visits
20 are required.

21 Respondent shall not work in any health care setting as a supervisor of registered nurses.
22 The Board may additionally restrict Respondent from supervising licensed vocational nurses or
23 unlicensed assistive personnel on a case-by-case basis.

24 Respondent shall not work as a faculty member in an approved school of nursing or as an
25 instructor in a Board approved continuing education program.

26 Respondent shall work only on a regularly assigned, identified and predetermined worksite
27 or worksites and shall not work in a float capacity.

28 If Respondent is working or intends to work in excess of 40 hours per week, the Board may

1 request documentation to determine whether there should be restrictions on the hours of work.

2 **10. Complete a Nursing Course.** Respondent, at her own expense, shall enroll and
3 successfully complete a course relevant to the practice of registered nursing no later than six
4 months prior to the end of her probationary term.

5 Respondent shall obtain prior approval from the Board before enrolling in the course.
6 Respondent shall submit to the Board the original transcripts or certificates of completion for the
7 above required course. The Board shall return the original documents to Respondent after
8 photocopying them for its records.

9 **11. Cost Recovery.** Respondent shall pay to the Board costs associated with its
10 investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
11 amount of \$1,500. Respondent shall be permitted to pay these costs in a payment plan approved
12 by the Board, with payments to be completed no later than three months prior to the end of the
13 probation term.

14 If Respondent has not complied with this condition during the probationary term, and
15 Respondent has presented sufficient documentation of her good faith efforts to comply with this
16 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
17 extension of Respondent's probation period up to one year without further hearing in order to
18 comply with this condition. During the one year extension, all original conditions of probation
19 will apply.

20 **12. Violation of Probation.** If Respondent violates the conditions of her probation, the
21 Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order
22 and impose the stayed discipline (revocation/suspension) of Respondent's license.

23 If during the period of probation, an accusation or petition to revoke probation has been
24 filed against Respondent's license or the Attorney General's Office has been requested to prepare
25 an accusation or petition to revoke probation against Respondent's license, the probationary
26 period shall automatically be extended and shall not expire until the accusation or petition has
27 been acted upon by the Board.

28 **13. License Surrender.** During Respondent's term of probation, if she ceases practicing

1 due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation,
2 Respondent may surrender her license to the Board. The Board reserves the right to evaluate
3 Respondent's request and to exercise its discretion whether to grant the request, or to take any
4 other action deemed appropriate and reasonable under the circumstances, without further hearing.
5 Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be
6 subject to the conditions of probation.

7 Surrender of Respondent's license shall be considered a disciplinary action and shall
8 become a part of Respondent's license history with the Board. A registered nurse whose license
9 has been surrendered may petition the Board for reinstatement no sooner than the following
10 minimum periods from the effective date of the disciplinary decision:

11 (1) Two years for reinstatement of a license that was surrendered for any reason other
12 than a mental or physical illness; or

13 (2) One year for a license surrendered for a mental or physical illness.

14 **14. Physical Examination.** Within 45 days of the effective date of this Decision,
15 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
16 assistant, who is approved by the Board before the assessment is performed, submit an
17 assessment of the Respondent's physical condition and capability to perform the duties of a
18 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
19 medically determined, a recommended treatment program will be instituted and followed by the
20 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
21 to the Board on forms provided by the Board.

22 If Respondent is determined to be unable to practice safely as a registered nurse, the
23 licensed physician, nurse practitioner, or physician assistant making this determination shall
24 immediately notify the Board and Respondent by telephone, and the Board shall request that the
25 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
26 immediately cease practice and shall not resume practice until notified by the Board. During this
27 period of suspension, Respondent shall not engage in any practice for which a license issued by
28 the Board is required until the Board has notified Respondent that a medical determination

1 permits Respondent to resume practice. This period of suspension will not apply to the reduction
2 of this probationary time period.

3 If Respondent fails to have the above assessment submitted to the Board within the 45-day
4 requirement, Respondent shall immediately cease practice and shall not resume practice until
5 notified by the Board. This period of suspension will not apply to the reduction of this
6 probationary time period. The Board may waive or postpone this suspension only if significant,
7 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
8 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
9 Only one such waiver or extension may be permitted.

10 **15. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

11 Respondent, at her expense, shall successfully complete during the probationary period or shall
12 have successfully completed prior to commencement of probation a Board-approved
13 treatment/rehabilitation program of at least six months duration. As required, reports shall be
14 submitted by the program on forms provided by the Board. If Respondent has not completed a
15 Board-approved treatment/rehabilitation program prior to commencement of probation,
16 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
17 If a program is not successfully completed within the first nine months of probation, the Board
18 shall consider Respondent in violation of probation.

19 Based on Board recommendation, each week Respondent shall be required to attend at least
20 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous
21 or Alcoholics Anonymous) and a nurse support group as approved and directed by the Board. If a
22 nurse support group is not available, an additional 12-step meeting or equivalent shall be added.
23 Respondent shall submit dated and signed documentation confirming such attendance to the
24 Board during the entire period of probation. Respondent shall continue with the recovery plan
25 recommended by the treatment/rehabilitation program or a licensed mental health examiner
26 and/or other ongoing recovery groups.

27 **16. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
28 completely abstain from the possession, injection or consumption by any route of all controlled

1 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
2 are ordered by a health care professional legally authorized to do so as part of documented
3 medical treatment. Within 14 days of the date a medication was prescribed Respondent shall
4 have the prescribing health professional send a written report to the Board identifying the
5 medication, dosage, the prescription date, the Respondent's prognosis, the date the medication
6 will no longer be required, and the effect on the recovery plan, if appropriate.

7 Respondent shall identify for the Board a single physician, nurse practitioner or physician
8 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and
9 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
10 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
11 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
12 considered addictive have been prescribed, the report shall identify a program for the time limited
13 use of any such substances.

14 The Board may require the single coordinating physician, nurse practitioner, or physician
15 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
16 medicine.

17 **17. Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
18 random, biological fluid testing or a drug screening program which the Board approves. The
19 length of time and frequency will be subject to approval by the Board. Respondent is responsible
20 for keeping the Board informed of Respondent's current telephone number at all times.
21 Respondent shall also ensure that messages may be left at the telephone number when she is not
22 available and ensure that reports are submitted directly by the testing agency to the Board, as
23 directed. Any confirmed positive finding shall be reported immediately to the Board by the
24 program and Respondent shall be considered in violation of probation.

25 In addition, Respondent, at any time during the period of probation, shall fully cooperate
26 with the Board or any of its representatives, and shall, when requested, submit to such tests and
27 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
28 hypnotics, dangerous drugs, or other controlled substances.

1 If Respondent has a positive drug screen for any substance not legally authorized and not
2 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
3 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
4 practice pending the final decision on the petition to revoke probation or the accusation. This
5 period of suspension will not apply to the reduction of this probationary time period.

6 If Respondent fails to participate in a random, biological fluid testing or drug screening
7 program within the specified time frame, Respondent shall immediately cease practice and shall
8 not resume practice until notified by the Board. After taking into account documented evidence
9 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
10 suspend Respondent from practice pending the final decision on the petition to revoke probation
11 or the accusation. This period of suspension will not apply to the reduction of this probationary
12 time period.

13 **18. Mental Health Examination.** Respondent shall, within 45 days of the effective date
14 of this Decision, have a mental health examination including psychological testing as appropriate
15 to determine her capability to perform the duties of a registered nurse. The examination will be
16 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
17 the Board. The examining mental health practitioner will submit a written report of that
18 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
19 Recommendations for treatment, therapy or counseling made as a result of the mental health
20 examination will be instituted and followed by Respondent.

21 If Respondent is determined to be unable to practice safely as a registered nurse, the
22 licensed mental health care practitioner making this determination shall immediately notify the
23 Board and Respondent by telephone, and the Board shall request that the Attorney General's
24 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
25 practice and may not resume practice until notified by the Board. During this period of
26 suspension, Respondent shall not engage in any practice for which a license issued by the Board
27 is required, until the Board has notified Respondent that a mental health determination permits
28 Respondent to resume practice. This period of suspension will not apply to the reduction of this

1 probationary time period.

2 If Respondent fails to have the above assessment submitted to the Board within the 45-day
3 requirement, Respondent shall immediately cease practice and shall not resume practice until
4 notified by the Board. This period of suspension will not apply to the reduction of this
5 probationary time period. The Board may waive or postpone this suspension only if significant,
6 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
7 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
8 Only one such waiver or extension may be permitted.

9 19. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in
10 an on-going counseling program until such time as the Board releases her from this requirement
11 and only upon the recommendation of the counselor. Written progress reports from the counselor
12 will be required at various intervals.

13 ACCEPTANCE

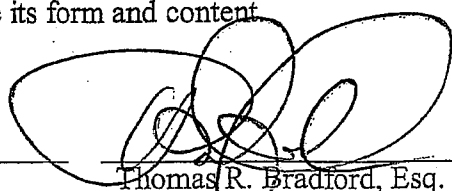
14 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
15 discussed it with my attorney, Thomas R. Bradford, Esq. I understand the stipulation and the
16 effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
17 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Board of Registered Nursing.

19
20 DATED: 7/11/12


CINDY KAY DUTRA AKA CINDY KAY GRAHAM
Respondent

22 I have read and fully discussed with Respondent Cindy Kay Dutra aka Cindy Kay Graham
23 the terms and conditions and other matters contained in the above Stipulated Settlement and
24 Disciplinary Order. I approve its form and content.

25
26 DATED: 7/11/12


Thomas R. Bradford, Esq.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: 7/19/2012

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General



GEOFFREY WARD
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2012-567

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFF WARD
Deputy Attorney General
4 State Bar No. 246437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2660
6 Facsimile: (213) 897-2804
Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. **2012 - 567**

12 **CINDY KAY DUTRA**
13 **aka CINDY KAY GRAHAM**
1010 Winfield Street
14 Newbury Park, CA 91320

A C C U S A T I O N

15 Registered Nurse License No. 410468

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing (Board).

21 2. On or about March 31, 1987, the Board issued Registered Nurse License No. 410468
22 to Cindy Kay Dutra aka Cindy Kay Graham (Respondent). The Registered Nurse License was in
23 full force and effect at all times relevant to the charges brought herein and will expire on
24 January 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 2764 provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

STATUTES

6. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 2761 states, in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

• • • •

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof. . . ."

8. Section 2762 states, in pertinent part:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

• • •

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

1 **REGULATIONS**

2 9. California Code of Regulations, title 16, section 1444 states, in pertinent part:

3 "A conviction or act shall be considered to be substantially related to the
4 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or

5 potential unfitness of a registered nurse to practice in a manner consistent
6 with the public health, safety, or welfare. Such convictions or acts shall include but
not be limited to the following:

7

8 "(c) Theft, dishonesty, fraud, or deceit. . . ."

9 **COST RECOVERY**

10 10. Section 125.3 provides that the Board may request the administrative law judge to
11 direct a licensee found to have committed a violation or violations of the licensing act to pay a
12 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

13 **CONTROLLED SUBSTANCES / DANGEROUS DRUGS**

14 11. **Norco and Vicodin**, trade names for combination drugs containing hydrocodone
15 bitartrate (opioid analgesic) and acetaminophen, are Schedule III controlled substances as defined
16 in Health and Safety Code section 11056(e)(4) and are categorized as dangerous drugs according
17 to section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of Substantially Related Crime)**

20 12. Respondent is subject to disciplinary action under sections 490 and 2761
21 subdivision (f), in conjunction with California Code of Regulations, title 16, section 1444, in that
22 on or about September 22, 2010, Respondent was convicted of a crime substantially related to the
23 qualifications, functions or duties of a registered nurse, as follows:

24 a. On or about September 22, 2010, after pleading nolo contendere, Respondent was
25 convicted of one misdemeanor count of violating Penal Code section 484(a) [petty theft] in the
26 criminal proceeding entitled *The People of the State of California v. Cindy Kay Graham* (Super.
27 Ct. Ventura County, 2010, No. 2010022593MA). The Court sentenced Respondent to five days
28 in jail, and placed her on 12 months of probation.

b. The circumstances underlying the conviction are that on or about September 2009 through on or about June 2010, Respondent admitted to stealing packets of Vicodin and Norco from patient stores at Thousand Oaks Royale, a senior citizen living center. In addition, she admitted to stealing Norco from another patient who was not at that senior living center. Further, she admitted that she consumed some of the drugs she had stolen and admitted to a problem with addiction.

SECOND CAUSE FOR DISCIPLINE

(Obtain / Possess Controlled Substances)

13. Respondent is subject to disciplinary action under section 2762, subdivision (a) for repeatedly obtaining and possessing Norco and Vicodin, controlled substances and dangerous drugs, without a valid prescription, in violation of law. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12 and its subparagraphs as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Drug Related Conviction)

14. Respondent is subject to disciplinary action under section 2762 subdivision (c), on the grounds of unprofessional conduct, in that on or about September 22, 2010, Respondent was convicted of a crime involving the possession of Norco and Vicodin, controlled substances and dangerous drugs for which she lacked a valid prescription. The crime also involved, by her own admission, the consumption and self-administration of these drugs. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 12 and its subparagraphs as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Registered Nurse License No. 410468, issued to Cindy Kay Dutra aka Cindy Kay Graham;

1 2. Ordering Cindy Kay Dutra aka Cindy Kay Graham to pay the Board the reasonable
2 costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3 3. Taking such other and further action as deemed necessary and proper.
4
5

6 DATED: March 22, 2012

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
State of California
Complainant

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